

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

FRANK EARL McCARRELL, JR., )  
Petitioner, )  
vs. )  
JUSTIN JONES, )  
Respondent. )

**FILED**  
**JAN 9 2006**  
ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY *[Signature]* DEPUTY

No. CIV-05-1003-W

**ORDER**

On December 20, 2005, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this matter and recommended that the Petition for a Writ of Habeas Corpus ("Petition") filed by petitioner Frank Earl McCarrell, Jr., be denied. McCarrell was advised of his right to object, and he timely filed an Objection to the Report and Recommendation.

Upon de novo review of the record, the Court concurs with Magistrate Judge Argo's suggested disposition of this matter. McCarrell was found guilty by a jury of one count of possession of a controlled dangerous substance (cocaine base), after former conviction of two or more felonies. The Honorable Gregory J. Ryan, Judge for the District Court of Oklahoma County, Oklahoma, pursuant to the jury's recommendation, sentenced McCarrell to a term of imprisonment of forty (40) years. McCarrell's conviction and sentence were affirmed by the Oklahoma Court of Criminal Appeals, McCarrell v. State, No. F-2003-609 (Okla. Crim. June 3, 2004), and he thereafter unsuccessfully sought post-conviction relief. McCarrell v. State, No. PC-2005-60 (Okla. Crim. April 6, 2005).

The Court has reviewed McCarrell's arguments pertaining to his warrantless arrest and the seizure of evidence under the fourth amendment to the United States Constitution and his challenges to the jury instruction on flight. The Court has also reviewed, in particular, McCarrell's contentions that he received ineffective trial and appellate assistance and that he was erroneously subjected to the more general recidivist statute, the Habitual Offender Act, 21 O.S. § 51.1(C). In so doing, the Court finds McCarrell has advanced no grounds either in his Petition or in his Objection that warrant further consideration or justify the requested relief.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation issued on December 20, 2005;
- (2) DENIES McCarrell's Petition file-stamped August 31, 2005; and
- (3) ORDERS that judgment in favor of respondent Justin Jones issue forthwith.

ENTERED this 9th day of January, 2006.



LEE R. WEST  
UNITED STATES DISTRICT JUDGE